

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JASON ANTHONY BARNETT, JR.,)
)
 Plaintiff,)
)
 v.) 1:16CV68
)
ALAMANCE REGIONAL MEDICAL)
CENTER, et al.,)
)
 Defendant(s).)

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an application to proceed *in forma pauperis*. The form of the Complaint is such that serious flaws make it impossible to further process the Complaint. The problems are:

1. Plaintiff already has a case pending in this Court, No. 1:14CV732, based on the same basic set of facts. Rather than seeking to file an entirely new action, he should seek to amend the Complaint in that case.
2. Plaintiff does not appear to state any viable claim for relief under § 1983, which requires intentional misconduct or deliberate indifference to a serious medical need. Here, Plaintiff's own allegations show that he received treatment from Defendants each time he was in their care. He claims that the treatment was not always correct. However, this appears to be an allegation of negligence or medical malpractice, not intentional misconduct or deliberate indifference. Claims of mere medical malpractice are not cognizable under § 1983.


Consequently, the Complaint should be dismissed, but without prejudice to Plaintiff filing a Motion to Amend his Complaint in case 1:14CV732 or filing a medical malpractice action in the state courts. To further aid Plaintiff, the Clerk is instructed to send Plaintiff new § 1983 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)). He may use these if he wishes to attempt to amend his Complaint in the earlier case.

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Plaintiff § 1983 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a Motion to Amend his Complaint in case 1:14CV732 or filing a medical malpractice action in the state courts.

This, the 2nd day of February, 2016.



Joe L. Webster
United States Magistrate Judge